

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-10027-PBS
)
 MATTHEW VICKERS)

DEFENDANT'S UNOPPOSED MOTION TO CONTINUE TRIAL AND
REQUEST THAT A PRESENTENCE REPORT BE PREPARED IN ADVANCE OF
ANTICIPATED GUILTY PLEA

Defendant, Matthew Vickers, hereby moves that trial be continued and requests that instead the Court order that a Presentence Report be prepared in this case before the defendant's expected guilty plea. As reasons therefore, defendant states the following:

1. The instant indictment is one of two now pending in United States District Court for the District of Massachusetts. The companion case, United States v. Matthew Vickers, No. 03-10392-RCL, alleges possession of a firearm by a convicted felon. That case has not yet been returned to Judge Lindsay from the magistrate judge.
2. This Court has heard and denied defendant's Motion to Suppress in this matter and scheduled trial for October 5, 2004. The government recently obtained a superseding indictment alleging sentencing factors in response to the Supreme Court's decision in Blakely v. Washington.¹

¹Defendant is to be arraigned on the superseding indictment this day. The superseding indictment triggers the Speedy Trial Act's provision that "trial shall not commence less than thirty days from the date on which the defendant first appears through counsel . . ." unless defendant consents in writing. 18 U.S.C. § 3161(c)(2). Consequently, this provision would preclude trial commencing on October 5, 2004 as presently scheduled, absent affirmative consent by defendant.

3. Defendant has indicated his amenability to a plea of guilty in both matters. The parties have begun negotiation of a possible plea agreement that would resolve both of the pending indictments.
4. Determination of defendant's sentencing exposure in these cases, both should he plead guilty or go to trial, is unusually complex. This is so because: (1) resolution involves two pending but nominally unrelated federal court cases; (2) the instant indictment involves sentencing calculations involving both statutory mandatory minimums and sentencing guidelines decisions; and (3) the instant matter involves different types of controlled substances. The Supreme Court's decision in Blakely v. Washington may further cloud some of the sentencing issues.
5. Counsel for defendant has provided a written opinion of the various sentencing permutations, likely outcomes, and defendant's options. That opinion, however, runs to several pages and is factually dense. Defendant has expressed unease with some of the representations as to outcomes outlined by counsel.
6. A pre-plea presentence investigation and report will provide a level of certainty upon which the parties can base negotiations, draft an agreement, and resolve both the instant matter and the companion matter.
7. Moreover, should the Court grant this Motion, the Supreme Court will likely have issued its opinions in United States v. Booker and United States v. Fanfan. Clarification by the Supreme Court will greatly facilitate the mechanics the Rule 11 colloquy as well as the sentencing hearing itself.
8. The government does not oppose this motion.
9. The parties agree that the entire period of time commencing on September 22, 2004 and concluding on the date of the defendant's guilty plea subsequent to the pretrial investigation and report is excludable under the Speedy Trial Act.

Wherefore, defendant respectfully requests this Court continue trial in this matter and order the probation department

to prepare a Presentence Report in advance of the defendant's expected plea of guilty.

MATTHEW VICKERS
By his attorney,

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